

*For Review March 11, 1994 2:00 p.m.
Revised 1/3/94*

ORIGINAL

TRANSCRIPT OF PROCEEDINGS

RECEIVED

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

MAR 22 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

IN RE APPLICATIONS OF:

MM DOCKET NO. 93-75

TRINITY BROADCASTING OF FLORIDA, INC.
and
GLENDALE BROADCASTING COMPANY

Miami, Florida

DATE OF CONFERENCE: March 4, 1994

VOLUME: 36

PLACE OF CONFERENCE: Washington, D.C.

PAGES: 5346-5369

FREE STATE REPORTING, INC.
Court Reporting Depositions
D.C. Area (301) 261-1902
Balt. & Annap. 410/ 974-0947

RECEIVED

5346

MAR 22 1994

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In Re Applications of:)
)
)

TRINITY BROADCASTING OF FLORIDA, INC.)

and)

GLENDALE BROADCASTING COMPANY)

Miami, Florida)
-----)

MM DOCKET NO. 93-75

The above-entitled matter come on for conference pursuant to Notice before Judge Joseph Chachkin, Administrative Law Judge, at 2000 L Street, N.W., Washington, D.C., in Courtroom No. 3, on Friday, March 4, 1994 at 9:00 a.m.

APPEARANCES:

On behalf of Trinity Broadcasting of Florida, Inc.:

NATHANIEL EMMONS, Esquire
Mullin, Rhyne, Emmons and Topel
1000 Connecticut Avenue, Suite 500
Washington, D.C. 20036-5383

On behalf of Glendale Broadcasting Company:

JOHN SCHAUBLE, Esquire
LEWIS COHEN, Esquire
Cohen & Berfield, P.C.
1129 20th Street, N.W.
Washington, D.C. 20036

GENE BECHTEL, Esquire
Bechtel & Cole, Chartered
1901 L Street, N.W., Suite 250
Washington, D.C. 20036

On behalf of Chief, Mass Media Bureau:

JAMES SHOOK, Esquire
2025 M Street, Suite 7212
Washington, D.C. 20554

FREE STATE REPORTING, INC.
Court Reporting Depositions
D.C. Area (301) 261-1902
Balt. & Annap. (410) 974-0947

I N D E X

	Page No.
1	
2	
3	
4	Opening Statements By Judge Chachkin 5348
5	Statement by Mr. Emmons 5350
6	Statement by Mr. Shook 5359
7	Statement by Mr. Bechtel 5360
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	Conference Began: 9:00 a.m. Conference Ended: 9:39 a.m.

FREE STATE REPORTING, INC.
Court Reporting Depositions
D.C. Area (301) 261-1902
Balt. & Annap. (410) 974-0947

P R O C E E D I N G S

JUDGE CHACHKIN: On the record. May I have the appearances on behalf of the parties? On behalf of Trinity Broadcasting of Florida, Inc.?

MR. EMMONS: Nathaniel F. Emmons.

JUDGE CHACHKIN: And National Minority T.V., Inc. is also Mr. Emmons?

MR. EMMONS: Yes, Your Honor.

JUDGE CHACHKIN: Glendale Broadcasting Company?

MR. BECHTEL: Gene Bechtel of Bechtel and Cole as special counsel on the Red Lion assignment issue. Mr. Schauble is here. He's one of the general counsel for the company.

JUDGE CHACHKIN: Chief, Mass Media Bureau?

MR. SHOOK: James Shook.

JUDGE CHACHKIN: And let the record reflect that there's no one here on behalf of the Spanish American League Against Discrimination.

The reason I'm holding this conference is, is because Trinity has requested an opportunity to argue on behalf of its Motion for Production of Documents and I felt it was appropriate to afford them such an opportunity since it's my intention to accept the, the motion by Glendale I believe to file opposition to Trinity's motion.

The controversy concerns Trinity's document request

1 11 which seeks documents relating to George Gardner's 1990
2 pledge that he would establish a program to insure future
3 compliance with the rules and regulations of the FCC.

4 Trinity is seeking documents such as instructions
5 given by Gardner to his FCC counsel to devise a compliance
6 program, the creation and operation of the compliance program,
7 instructions given by Gardner to FCC counsel to report at
8 three month intervals regarding continuing compliance with the
9 Commission's rules and regulations, and reports given by the
10 FCC counsel to Gardner pursuant to the foregoing instructions.

11 Trinity is also seeking documents, not only those
12 generated prior to January 14, 1992, the date that the Red
13 Lion expense certification was filed, but also subsequent
14 documents relating to the subject matter, and Glendale opposes
15 this request and we have Glendale's response setting forth the
16 reasons that they oppose this request.

17 And, Mr. Emmons, I'll afford you an opportunity to
18 respond to Glendale and the Bureau to submit their response,
19 but I hope in your response that you demonstrate how the
20 documents you are seeking are relevant to the evidentiary
21 issue which I added which is, namely, whether Raystay made
22 misrepresentations or lacked candor in its applications to
23 assign the construction permit of the low powered television
24 station in Red Lion/York, Pennsylvania.

25 The remainder of the issue is merely a conclusory

1 issue and states, "and, if so, the effect thereof on a
2 Glendale -- on Glendale's qualifications to be a licensee,"
3 and I want to make clear that the only evidentiary issue
4 concerns the question of determining whether Raystay made
5 misrepresentations in connections with the assignment
6 application. Go ahead, Mr. Emmons.

7 MR. EMMONS: Thank you, Your Honor. What makes the,
8 the requested documents relevant to the designated issue, Your
9 Honor, under the -- what I call the second prong of the issue
10 and you've described correctly as the effect of any adverse
11 finding under the designated issue, what makes the requested
12 documents relevant is the Commission's policy stated in the
13 Character Policy Statement that among the factors that the
14 Commission will consider in determining the weight to be
15 accorded any misconduct that might be found under the
16 designated issue will be, among other things, the applicant's
17 record of compliance with our rules and policies, if any, and
18 the Commission says that that should ordinarily be taken into
19 account in making the determination of what weight will be
20 given to any finding of misconduct.

21 Now, the -- Glendale has argued in their, in their
22 objections that because the designated issue does not say
23 anything about compliance record, that the documents being
24 requested are not relevant but, Your Honor, I submit that
25 that's beside the point because what makes it relevant is the

1 Policy Statement.

2 JUDGE CHACHKIN: Well, you just quoted the Policy
3 Statement which you stated correctly that the Commission says
4 you can give weight to the extent to which the applicant has
5 complied with Commission's rules and regulations and
6 apparently there's no dispute on that. The dispute concerns
7 your request for specific documents as to the matter in which
8 Gardner has fulfilled his pledge to comply with the
9 Commission's rules and regulations. And the argument is that
10 there is no specific issue in this case dealing with that
11 subject matter, that you specifically made requests for
12 enlargement of the issues previously and your requests were
13 denied and now you're seeking through, as you call, the second
14 prong to attempt to obtain evidence under an evidentiary issue
15 which has not been set for hearing.

16 MR. EMMONS: Your Honor, I think that Glendale is
17 under --

18 JUDGE CHACHKIN: And no one's denying, Mr. Emmons,
19 the fact that -- and I've already ruled previously that I
20 would allow in evidence to show the fact that Glendale was
21 aware -- well, first of all, to show that the Commission had
22 put Glendale on notice that it was on probation or heightened
23 scrutiny and also that Glendale had -- was aware of such
24 notice and Glendale had promised to comply. Nobody's
25 questioning that and in my previous rulings I said it was

1 | pertinent to consider those matters in determining what weight
2 | to give -- be given to any violations that Glendale might have
3 | been guilty of. But what you're seeking is something beyond
4 | that and, as pointed out by Mr. Bechtel, there's no -- neither
5 | of the Commission's Policy Statements or case precedent
6 | supports your view and you haven't cited any which permits you
7 | to go into their specific compliance program without an issue,
8 | a specific issue, which you're seeking to do here.

9 | MR. EMMONS: I'd like to clarify one thing that I
10 | think is a misapprehension on Glendale's part about Trinity's
11 | having requested previously an issue about compliance and that
12 | having been denied. That request was for an issue as to
13 | whether at the time that Glendale made -- excuse me, that
14 | George Gardner made the compliance promises in 1990 whether he
15 | was making a misrepresentation. In other words, it went to
16 | his state of mind at the time he made it, whether it was in
17 | good faith when he made it. That's not the issue that, that
18 | we're focused on right now. The issue we're focused on now is
19 | whether having made the promises in 1990 and assuming for the
20 | sake of argument that they were made in perfectly good faith
21 | at the time they were made, the issue then becomes did he
22 | follow through on those promises and do the things that he
23 | told the Commission he was going to do.

24 | JUDGE CHACHKIN: And I'm not saying that you haven't
25 | a right to go into it if, if you first filed the Petition to

1 Enlarge Issues and demonstrated that there was a justification
2 for the issue.

3 MR. EMMONS: Well --

4 JUDGE CHACHKIN: The question is whether you're
5 entitled to go into it under the existing issues.

6 MR. EMMONS: I agree that that's exactly the issue,
7 Your Honor, and I submit that --

8 JUDGE CHACHKIN: You don't think you had it -- you
9 had to file a Request for Enlargement of Issues to go into the
10 specific issue you're seeking?

11 MR. EMMONS: Your Honor, I do not believe that a
12 specific issue is required in order to go into this under the
13 designated issue as made relevant by the Character Policy
14 Statement. The reason I say that, Your Honor, is I do think
15 that a showing, a threshold showing, is required that there
16 has been some failure on the part of George Gardner to comply
17 with the promises he made in 1990. I do agree with that, Your
18 Honor. But it is a threshold showing. It is not necessary to
19 have a specific special issue designated.

20 JUDGE CHACHKIN: What case precedent do you have --

21 MR. EMMONS: Well, there's a --

22 JUDGE CHACHKIN: -- that supports that a threshold
23 showing is sufficient?

24 MR. EMMONS: There's a direct analogy, Your Honor,
25 in a well established Commission procedure in a different

1 context, but the principles are -- I think are exactly the
2 same.

3 JUDGE CHACHKIN: What is that?

4 MR. EMMONS: In the, in the 1965 Comparative Policy
5 --

6 JUDGE CHACHKIN: Are you talking about unusually
7 good or bad past broadcast record?

8 MR. EMMONS: Yes, Your Honor.

9 JUDGE CHACHKIN: Well, what does that have to do
10 with the question of whether you're seeking the character --

11 MR. EMMONS: Well, it establishes a procedure, Your
12 Honor, for what -- for how the parties and the Commission
13 proceed when a character -- excuse me, when a Policy Statement
14 makes an area of inquiry relevant under a designated issue,
15 the question is do you need to have a specific issue to go --
16 to make a specific inquiry?

17 In the case of the past broadcast record, whether
18 unusually good or unusually bad, it was settled many, many
19 years ago and has always since then been the Commission
20 policy, explicitly stated, that it is not necessary for a
21 party to seek a special issue to explore whether an applicant
22 had an unusually good or unusually bad past broadcast record.
23 It is necessary for the applicant to make a threshold showing
24 that would justify an inquiry into that.

25 JUDGE CHACHKIN: But aren't you forgetting that

1 | there had to be an underpinning, namely, there had to be a
2 | comparative issue? In other words, the Commission said if
3 | there is an existing comparative issue and if you want to go
4 | into a particular -- make a showing under that comparative
5 | issue to which you can title -- you may be entitled to some
6 | credit or not, a threshold showing is sufficient. There's no
7 | need for enlargement of issues. But here the only
8 | underpinning is the evidentiary issue which I've added.

9 | MR. EMMONS: I agree.

10 | JUDGE CHACHKIN: Under the issue I've added -- in
11 | other words, under the issue I've added the question is what
12 | right do you have to seek evidence, it seems to me, in an area
13 | in which I haven't added an issue?

14 | MR. EMMONS: The Character Policy Statement, I
15 | think, Your Honor, says that when there is a designated issue,
16 | and in this case it's the two designated misrepresentation and
17 | candor issues, when there is a designated issue one of the
18 | relevant areas of inquiry under that issue is whether -- what
19 | the applicant's record of compliance has been. And so we have
20 | the designated issue and the Character Policy Statement is, is
21 | the pronouncement of the Commission which makes this area now
22 | relevant under those designated issues provided there is the
23 | threshold showing that there has been some failure.

24 | I do not argue and would not argue that under this
25 | Policy Statement a party could roam without any basis at all

1 | looking for any violation at all at any time in the past by,
2 | by the opposing party. There does have to be a threshold
3 | showing.

4 | But in this case, Your Honor, the threshold showing
5 | is the prima facie evidence in fact that, as reflected by the
6 | two designated issues themselves, that George Gardner --
7 | there's a substantial and material question whether George
8 | Gardner did follow through and do the things he said.

9 | What he said he was going to do was insure that all
10 | his statements to the Commission in the future would be candid
11 | and truthful and accurate, and he said he was going to
12 | establish a compliance program for TV 40 and it was also going
13 | to apply to the other five construction permits if they were
14 | granted, and he made that promise when he was under heightened
15 | scrutiny. He made it for the purpose of obtaining the grants
16 | of those construction permits and, as the evidence that led to
17 | the two designated issues demonstrates, there's a serious
18 | question of whether, in fact, he has followed through and
19 | honored what he said he would do.

20 | So that's the threshold showing, Your Honor, that I
21 | think amply justifies, especially when you have an applicant
22 | like Mr. Gardner who is under heightened scrutiny, justifies
23 | exploring whether, in fact, he followed through on those
24 | specific promises, and this is a very narrow inquiry, Your
25 | Honor. This is not broad, free roaming, at all and it's not

1 going to lead to the designation of any other issues. It's
2 not going to lead to any other issue request. It's going
3 simply to the question of what sanction would be appropriate
4 in the event that adverse findings were made against Mr.
5 Gardner under either of the two designated issues.

6 And so there's not going to be any question about
7 whether Mr. Gardner should be disqualified solely because he
8 didn't follow through on his compliance program because that's
9 not going to be a separate issue. The question's simply going
10 to be if he didn't follow through, what effect, if any, would
11 that have in assessing the sanction that will be imposed if
12 there is, if there is an adverse finding under the designated
13 issues.

14 So it's a narrow inquiry and particularly, Your
15 Honor, I think when an applicant is under heightened scrutiny,
16 as Mr. Gardner is, I don't know what heightened scrutiny means
17 if it doesn't mean that we, the Commission, are going to look
18 much more carefully at this applicant's record of reliability
19 and promises than we might with respect to the ordinary
20 applicant.

21 JUDGE CHACHKIN: But nobody's claiming that you
22 can't point out -- I mean, it's all -- and I've made clear
23 that it's permissible to go into the question of whether or
24 not there's been compliance in light of the heightened
25 scrutiny that the Commission has placed over the licensee, but

1 | you want to go way beyond that. You want to deal -- seek
2 | evidence, presume -- while you say it doesn't deal with
3 | misrepresentations, clearly and presumably it would be the
4 | basis for a misrepresentation determination if, in fact,
5 | George Gardner had not, as he represented, established some
6 | kind of compliance program.

7 | MR. EMMONS: Well --

8 | JUDGE CHACHKIN: Now, that's an evidentiary issue,
9 | it seems to me. That's a separate issue entirely of whether
10 | the licensee complied with the Commission's rules and
11 | regulations which the Character Statement speaks of.

12 | MR. EMMONS: Oh, on that point, Your Honor, if we're
13 | going to distinction between Commission rules and regulations
14 | and Mr. Gardner's representations or promises, I think that in
15 | effect they are the same thing because the Character Policy
16 | Statement does expressly say also that reliability of an
17 | applicant or a licensee "includes the propensity to act
18 | consistent with one's representations." And the underpinning
19 | for the Character Policy or one of the two underpinnings, the
20 | two are reliability and truthfulness and the Commission wants
21 | to know whether an applicant can be relied upon to comply with
22 | the Commission's rules, and as I've just read, to act
23 | consistently with its representations to the Commission.

24 | So I don't think it would be appropriate to draw a
25 | distinction here that because what we're talking about is

1 whether Mr. Gardner complied with his own representations that
2 that's different from the question of whether he's complied
3 with the Commission rules.

4 JUDGE CHACHKIN: Mr. Bechtel, do you have anything
5 that you'd like to --

6 MR. BECHTEL: The Bureau -- is the Bureau going to
7 answer?

8 JUDGE CHACHKIN: Does the Bureau have any response?

9 MR. SHOOK: Well, Your Honor, the Bureau disagrees
10 with Trinity on this matter. The difficulty that the Bureau
11 has is trying to distinguish the document request that Trinity
12 is seeking from a document request that could explore other
13 possible rule violations without there actually being a
14 designated issue relative to those other rule violations.

15 For example, although Mr. Emmons -- or although
16 Trinity is not presently seeking, for example, documents that
17 concern possible EEO violations, just to take an example, it
18 seems to me that the nature of Trinity's request and the
19 arguments that Trinity is making would lead to the possibility
20 that they could also seek such documents if, in fact, they
21 were allowed to seek documents relative to the compliance
22 program.

23 The Bureau cannot distinguish Trinity's present
24 request from such a request as I have just described or one
25 that would lead to requests for documents concerning possible

1 technical violations. We don't have an issue right now
2 concerning the compliance program. Without such an issue, the
3 Bureau does not believe that those documents should become
4 part of the evidentiary record at, at this stage. The issue
5 that we have is a very narrow one and the documents that
6 Trinity wishes to obtain and they are not -- they do not
7 presently have are those to which we believe Trinity is not
8 entitled.

9 JUDGE CHACHKIN: Mr. Bechtel?

10 MR. BECHTEL: Yes, sir. With all due respect to Mr.
11 Emmons, I don't think the -- it's accurate to say that the
12 broadened inquiry is a narrow one. They are asking to
13 discover the compliance program with regard to an operating
14 television station.

15 Some years ago I was involved, and I think Your
16 Honor was, too, in the Gross Telecasting case where the
17 Commission had conducted evidentiary -- discovery and
18 evidentiary inquiry into whether that television station
19 complied with every single rule and regulation the FCC had.
20 Discovery took two years and the trial took two years.

21 Well, that's an -- obviously a more exaggerated
22 example. Here we're talking about a single television station
23 that's a low power television station but, nonetheless, there
24 are a lot of rules out there and this is going to open up a
25 lot of inquiries. We're not, we're not trying to hide that

1 program. As a matter of fact, we're kind of proud of it, but
2 this would just open up a lot of rules, a lot of oversight in
3 the operation and compliance with those rules for an -- for
4 the full period of time. The request is to go beyond January
5 1992 when we filed the Red Lion assignment application. They
6 want to take it all the way through, so it's not a narrow
7 inquiry.

8 The -- Mr. Emmons took us back to the 1965 Policy
9 Statement and the bad broadcast record or the prior broadcast
10 record, either good or bad, for which a major preliminary
11 showing is required and it doesn't, doesn't -- hasn't been
12 attempted here. I think we ought to stay with his reference
13 to the Character Policy Statement in 1985 and the absence of
14 any cases that he has cited where the Commission ever gave
15 credence to this second prong business.

16 I'm trying to study that. I haven't found any
17 cases, sir. I represent to you that I've done the best I know
18 how. But I did find a case that involved -- I don't think
19 it's a surprise. It involved Mr. Emmons as well as my co-
20 counsel. As a matter of fact, I must be the, the virgin of
21 the group in terms of this particular subject, but I would
22 like to show it to you and to counsel.

23 It's a Metroplex renewal proceeding in 1989, a
24 Review Board decision, and I've taken the liberty of flagging
25 the footnote which gets into the matter of interpreting that

1 Character Policy Statement and how you can get into discovery
2 of other matters under the Parts and Policy Statement that I
3 believe Trinity is relying on, and I'll give you all a chance
4 to look at that, that footnote and then I have one more thing
5 to say.

6 This will be my final thought. The full Commission
7 denied applications for review of that Metroplex ruling but,
8 as I read the text of that, they didn't get into that
9 particular footnote. However, a recent case, EZ
10 Communications, Inc., does make a reference to Metroplex. It
11 is a full Commission case and I think it reinforces the point
12 and I'll take it -- with your permission I'll distribute that,
13 as well.

14 The thrust of these both is to their prima facie
15 showing of some sort is required and with regard to either
16 discovery of the existing television station on Channel 40 or
17 the discovery, broad discovery, subsequent to the date we
18 filed the Red Lion assignment application. No prima facie
19 showing has been made.

20 JUDGE CHACHKIN: Well, I would just say that these
21 two cases you said plus a more recent case where the
22 Commission has ruled in this matter are not exactly on point
23 for these cases hold for the proposition that in a situation
24 where, where you're talking about renewal expectancy which we
25 don't have here. We don't have a renewal expectancy question

1 here. I mean, I should say we don't have a renewal
2 expectancy. We don't -- there's no comparative showing. We
3 don't have a -- well, we don't have a situation of renewal
4 expectancy involving Glendale.

5 The Commission has said that it's not necessary to
6 have a basic issue in order to go into questions concerning
7 compliance of rules and regulations. You could do so with a
8 prime facie showing. Here we don't have that situation. And
9 also -- but it is on point where the Review Board said that in
10 a normal situation where you're not dealing with, with a
11 comparative -- with renewal expectancy, indeed a basic issue,
12 to go into questions of compliance with the rules and
13 regulations. That is more on point here because this case
14 does not involve a situation of renewal expectancy.

15 So to that extent it is on point that in the absence
16 of an unusual situation involving renewal expectancy, if you
17 wish to seek evidence concerning compliance with the rules and
18 regulations, then you need a specific issue. Now, Mr. Emmons,
19 you have any further comment?

20 MR. EMMONS: Well, I just want to address what Mr.
21 Shook pointed out and Mr. Bechtel made the same point
22 essentially, too, which is that this could open up a Pandora's
23 box of requests for additional issues if violations were
24 found.

25 I can represent that Trinity has no intention to do

1 that and even if the documents were to show the existence of
2 other violations, it is not Trinity's intent to raise those.
3 There won't be any Motions to Enlarge based on any documents
4 that are produced under this issue request. I can't speak for
5 the Bureau or any other party on that, but that's, that's
6 Trinity's position. We are interested solely in, in learning
7 whether Mr. Gardner did fully comply with what he said he was
8 -- with the procedures he said he was going to follow. That's
9 the narrow focus of our interest and inquiry here.

10 On the question of the -- what I call the January
11 1992 cutoff, I think that there is no relevance of that date
12 at all for the, for the purpose of the inquiry. The
13 Commission did not take Mr. Gardner off heightened scrutiny in
14 January 1992. Mr. Gardner did not say he was going to end his
15 compliance program in January 1992. If it is relevant to look
16 at whether he followed through on his compliance promise, then
17 that -- it's relevant to know whether he did that from the
18 time he made it up to the present time. That's what the
19 Commission, I think, would want to know in judging what effect
20 ought to be given to any sanction -- in assessing what the
21 sanction ought to be for any finding of misconduct under the
22 designated issues.

23 And just a point on the Metroflex footnote, Your
24 Honor. I think it does talk about a threshold and a prima
25 facie showing and I think, as I say, that that threshold is

1 met by the facts that led to the designation of the, the two
2 designated issues.

3 JUDGE CHACHKIN: Well, you've missed my point. The
4 threshold showing was appropriate there because it was a
5 question of renewal expectancy. We don't have a renewal
6 expectancy situation with regard to Glendale --

7 MR. EMMONS: I agree.

8 JUDGE CHACHKIN: -- and the Board made clear that if
9 it wasn't for a renewal expectancy, there would be a need for
10 a basic issue. The Board specifically said that in the -- if
11 you look at the footnote, so it doesn't support you -- your
12 position, Mr. Emmons.

13 If you read it, the question is -- well, Metroplex
14 argues that the ALJ should not have allowed discovery on the
15 matter of the station's record of compliance with FCC rules
16 during the license term in the absence of the addition of a
17 more specific compliance issue. And then -- and the Board
18 states, "The Board believes that since a renewal applicant
19 literally runs on its record and compliance is an important
20 part of that record, a renewal applicant cannot but expose its
21 compliance record for proper scrutiny," and it said,
22 "Ordinarily, of course, discovery is not permitted unless a
23 specific hearing issue is added upon the showing of a
24 significant material question of fact." So what the Board did
25 they made a distinction between a situation involving renewal

1 | expectancy where you run on your record and an ordinary
2 | situation where you don't have that factor, and they said in
3 | the latter case you need a basic issue.

4 | MR. EMMONS: I think the Board had in line there
5 | and, of course, I can't read anybody's mind, but I don't think
6 | the Board was contemplating a circumstance as we have here
7 | where the -- we have a designated issue and then we have a
8 | Character Policy Statement that says when you have a
9 | designated issue it's relevant to know what the compliance
10 | record has been. I think the Board was contemplating more the
11 | ordinary circumstance where there's no issue at all and
12 | somebody wanted to get into a compliance record.

13 | JUDGE CHACHKIN: The only issue we have here relates
14 | to the assignment of Red Lion. That's the only issue we have
15 | here. We don't have any other issue in this case. We don't
16 | have an issue going in questioning whether or not generally
17 | Gardner has complied with the rules and regulations. We don't
18 | have any other issue except that one -- we have an evidentiary
19 | issue which deals with a specific subject matter. That's all
20 | we have in this case.

21 | MR. EMMONS: I agree with that, Your Honor, but I
22 | think the Character Statement -- Policy Statement puts the
23 | question of compliance with rules and regulations, and I would
24 | add compliance with one's own representations, into issue in a
25 | limited way when you have such an issue as you've just

1 described.

2 JUDGE CHACHKIN: No. First of all, you're not
3 seeking it in a limited way. You're not even going to limit
4 it to the time frame of the time when the incident that we're
5 scrutinizing took place. You want to go beyond that to the
6 present time. That certainly is not limited. You want to use
7 this as a method to get into their compliance of the rules and
8 regulations up to the present time. That's certainly not
9 limited. I don't know where that goes. I mean, I assume, as
10 pointed out by Bureau counsel, you can question whether they
11 violated the EEO rules or what have you.

12 MR. EMMONS: No. I -- well, as I --

13 JUDGE CHACHKIN: If I would agree with your position
14 then I don't see -- it seems to me that the door is wide open
15 to permit you to discover into any possible violation that the
16 station -- that the licensee has committed, notwithstanding
17 that their renewal expectancy is not at issue here. That's
18 what you're seeking here.

19 MR. EMMONS: No. I respectfully --

20 JUDGE CHACHKIN: Well --

21 MR. EMMONS: -- say again, Your Honor, that we don't
22 seek that and we won't ask for that.

23 JUDGE CHACHKIN: Well, you may not ask for that, but
24 it seems to me it would have been relevant for you to seek
25 those documents if the door was open the way you seek it -- to

1 open it. You may want to limit it, but the issue that you're
2 -- the discovery you're seeking would permit you to go much
3 further.

4 MR. SHOOK: Your Honor, interestingly also, and I
5 respect Mr. Emmons' point on this, that if they were to
6 discover something in looking at the compliance program that
7 they wouldn't look further, but certainly if there happened to
8 be a little nugget lurking within there, you know, the Bureau
9 would obviously be under an obligation to explore that
10 further, so what we have here possibly is a domino effect
11 where we would be starting to explore a matter that is
12 presently not at issue, but in so doing we could start finding
13 all sorts of things perhaps that exist. Now, obviously
14 Glendale thinks otherwise at this stage, but that doesn't mean
15 that there isn't something lurking within there. As Your
16 Honor has said, once the door is opened here there is no, you
17 know, stopping the looking that could take place.

18 JUDGE CHACHKIN: Well, Mr. Emmons, I agree with the
19 Bureau and I agree with Glendale that the documents you are
20 seeking are not relevant to the issues -- basic issue which I
21 added. I also agree with them that the January 14, 1992 date,
22 the date that the expense certification was filed, is the
23 proper cutoff point and, therefore, I'm going to deny your
24 discovery request.

25 If, if you have evidence justifying your going into

1 | whether or not they made misrepresentations to the Commission
2 | concerning their compliance program, then the proper vehicle
3 | is to file a Petition to Enlarge Issues, which I might say is
4 | -- you haven't done, and to be considered whether or not
5 | there's a need for a basic evidentiary issue. In the absence
6 | of such a basic issue, then I'm not disposed to permit you to
7 | discover as to their compliance -- as to that specific
8 | compliance program. So I will deny your Motion for Production
9 | of Documents. We're now recessed. Thank you.

10 | (Whereupon, the conference was adjourned at 9:39
11 | a.m.).

12 |
13 |
14 |
15 |
16 |
17 |
18 |
19 |
20 |
21 |
22 |
23 |
24 |
25 |